

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

Company Petition (IB)No.342/ALD/2018
(Under Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of
the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rule, 2016)

IN THE MATTER OF

Bank of Baroda

.....*Applicant/Financial Creditor*

VERSUS

M/s Baghaulti Sugar & Distillery Limited

.....*Respondent/Corporate Debtor*

ORDER RESERVED ON : 10.01.2020
ORDER DELIVERED ON :07.02.2020

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

**For the Applicant/ Operational Creditor: Sh. Gagandeep Singh ,Advocate along with
Mr. Brijesh Kumar Tamber, Advocate**
**For the Respondent/ Corporate Debtor: Mr. S.S Nigam (Sr. Adv) along with
Mr. Alok Kumar Srivastava, Adv**

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

1. The present petition has been filed by the applicant i.e Bank of Baroda under Section 7 of the Insolvency and Bankruptcy Code, 2016 for the initiation of the Corporate Insolvency Resolution Process against i.e M/s Baghaulti Sugar and Distillery Ltd.
2. It is submitted by learned counsel for the applicant that the credit facilities were sanctioned by the applicant under the ages of a consortium led by it from time to time vide Letter of Sanction dated 13.03.2007, 19.11.2008, 04.11.2009, 24.02.2010, 13.09.2012, 15.02.2012, 10.01.2015.
3. Further, on account of failure of the corporate debtor to discharge its credit obligations with the CDR package, the loan account of the corporate debtor was classified as an NPA on 31.05.2010 in the



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books of accounts of the applicant bank which is established by annexing the following documents:

- a) Master Restructuring Agreement dated 23.03.2011(Annexed as Annexure A-90).
- b) Notice under Section 13(2) of SARFAESI Act dated 16.02.2016(Annexed as Annexure A-106).
- c) OTS Proposal by Corporate Debtor dated 28.07.2016 (Annexed as annexure A-107)
- d) CIBIL Report of the Corporate debtor (Annexed as Annexure A-120).

4. Further submitted that a compromise proposal was moved by the corporate debtor acknowledging the outstanding Debt which was approved by the financial creditor. However, the terms of the said OTS was not complied with by the corporate debtor and it lapsed. Further the corporate debtor along with guarantors further acknowledges the debt and validity of documents executed in favour of the BOB Consortium vide letter dated 10.10.2016

5. It is further submitted that the debt is further admitted in the reply filed by the Corporate Debtor in Para 11 to 19 filed on 11.09.2018 and the default is admitted by the corporate debtor in letter dated 15.09.2018.

6. The learned counsel for the corporate Debtor stated in the counter affidavit filed by them that the financial creditor has abused the process of law by forum shopping by not disclosing that they have already initiated proceeding before DRT , Delhi by filing Original Application No. 1272/2018 to which the financial creditor has replied that the filing of application before DRT Delhi was disclosed in the original Application and further the same does not prohibits filing before this tribunal although the relief claim before both the tribunal are the same.



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7. The counsel for the corporate Debtor submitted that there were three banks namely Bank of Baroda, Bank of India and Union Bank and the corporate debtor has already entered into one time settlement with Bank of India and Union Bank and the corporate Debtor is paying the installment as per One Time Settlement to the bank and the entire liability will be liquidated by July 2020. Further submitted that the corporate Debtor is one of the Sahara Group Companies as the entire shareholding was transferred to Sahara Prime City Ltd and to substantiate this, an affidavit dated 22.02.2019 was filed by the corporate debtor before this tribunal as directed by the tribunal vide order dated 25.01.2019 annexing the NOC for the change in management and ownership of M/S Baghaulti Sugar & Distillery Ltd. in Sahara Group and even the financial creditor by its letter dated 31.03.2012 has granted NOC for the same.

8. Further stated by the learned counsel for the corporate debtor that the corporate debtor has annexed documents to show that the financial creditor has also received loan from Sahara Prime and the corporate debtor has also filed annual return and the document annexed at Pg 17 of the reply shows that Sahara Prime City is the holding Company of M/s Baghaulti Sugar & Distillery Ltd and the financial creditor is well aware in every meeting that Sahara Group of Companies is attending the meeting for the resolution of dispute.

9. It is further submitted that OTS was also made to the financial creditor but it was mischievously rejected and also stated that the corporate debtor is making all its efforts to repay the debt and has been complying with its commitment with all the financial creditor as the entire sugar factory has been in crises up to 2016 but GOI



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has fixed minimum statutory price for sugar that will able to run the plant for the present crushing season 2019-2020.

10. From the perusal of averments made in the application filed on behalf of petitioner and counter affidavit filed on behalf of the respondent, this adjudicating Authority finds, the Corporate Debtor in the Counter affidavit admits the debt and states that the corporate debtor is making all its effort to repay the debt and has been complying with its commitment with all financial creditor.

11. Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:

i.) Whether there is duly established financial debt.

ii.) Whether there is default in payment by the corporate debtor.

iii.) Whether the documents attached with the application shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary proceedings are pending against the proposed resolution professional.



12. It is a settled law that the Adjudicating Authority is only required to ensure whether there is a debt and default on the basis of record (Form 1). It cannot take into consideration any other facts which are irrelevant. The 'Corporate Insolvency Resolution Process' not being a litigation much less adversarial litigation or a recovery proceeding or a money suit, has been held by this Appellate Tribunal in "***Binani Industries Limited vs. Bank of Baroda & Anr.— Company Appeal (AT) (Insolvency) No. 82 of 2018***".

13. The Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank, (2017)205 Comp Cas 57(SC)*** also held :

"The scheme of Sec 7 stands in contrast with the scheme under Sec 8 where an operational creditor is, on the occurrence of a default, to

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first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in sec 8(1) of the Code. Under Sec 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in Sub Section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing -i.e., before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor goes out of the clutches of the Court. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the Financial Creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is 'due', i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some further debt. It is only when this is prove to the satisfaction of the adjudicating authority may reject an application and not otherwise".

14. Hence, the application filed on behalf of financial creditor/Applicant under Section 7 of IBC is found complete. The present petition being filed in September,2019 is well within limitation, being within three years from the date of the cause of action. It is seen that the amount in default is in excess of Rs. 1,00,000/- being the minimum threshold limit fixed under IBC to trigger off providing under Section 7 of the IBC.

15. Further the default of the debt has been admitted by the corporate debtor in the reply filed by them and applicant has annexed sufficient evidence to show the default on behalf of the corporate debtor. Considering these circumstances this adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent Company. Accordingly, this petition is admitted.



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16. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein.

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation. - For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.]

2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to



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protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.



The Operational Creditor has proposed the name of **Mr. Vivek Raheja** Registration Number **IBBI/IPA-001/IP-P00055/2017-18/10133** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.

18. The registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and to IRP.

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19. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

20. List on 02.03.2020 for the filing of the progress report.



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JUSTICE RAJESH DAYAL KHARE
MEMBER (J)

Date: 07.02.2020

Swati Gupta
(LRA)

Compared by Me
Mahesh Sahai
7/02/2020

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CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Jr
7/2/2020

P. P. PANDEY
ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD U.P.